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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/713,302

11/17/2003

Toshikatsu Fukuju

0397-0470P

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2292 7590 07/23/2007  
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EXAMINER

SIEFKE, SAMUEL P

ART UNIT

PAPER NUMBER

1743

NOTIFICATION DATE

DELIVERY MODE

07/23/2007

ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

mailroom@bskb.com

<b>Office Action Summary</b>	Application No. 10/713,302	Applicant(s) FUKUJU ET AL.	
	Examiner Samuel P. Siefke	Art Unit 1743	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 28 June 2007.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-75 is/are pending in the application.
- 4a) Of the above claim(s) 1-11 and 30-75 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 12-15, 18-21, 23-26, 28 and 29 is/are rejected.
- 7) ☒ Claim(s) 16, 17, 22 and 27 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date <u>1/23/06, 9/7/04, 11/17/03</u> | 6) <input type="checkbox"/> Other: _____  |

### DETAILED ACTION3

#### *Election/Restrictions*

Claims 1-11 and 30-75 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected Group I, III, IV, V, VI, VII, VIII IX, X, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on 6/28/07.

#### *Claim Rejections - 35 USC § 102*

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 12-15, 18-21, 23-26 and 28-29 are rejected under 35 U.S.C. 102(b) as being anticipated by WO 97/14967 Bell (herein after Bell).

Bell discloses a vented probe and a method for adding and removing a sample from a container. The probe (10) comprises an elongated pipe (12) having a liquid flow path extending therein (lumen 17) and a plurality of communicating sections (26, three vents), wherein the communication sections are provided in an outer surface (14) of the pipe for communicating between an inside and an outside of the container (28) when the pipe is stuck into the container (figure 1 and 2, page 8, lines 7, lines 26-page 11, line 30). Regarding claim 13, the liquid flow path extends parallel to an axis of the pipe (fig.

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1, lumen 17). Regarding claim 14, the vents 26 are provided on the outside 14 of the elongated pipe 12 (fig.1 and 2, page 9, lines 14-27). Regarding claim 15, the recesses are provided parallel to the axis of the pipe (fig.1 and 2). There are three vents located on the outer surface 14 of pipe 12 that run parallel to the axis of the pipe. Regarding claim 18, the container 28 has an opening 32 which is capped with stopper 34 which the pipe is stuck into the closed container, the cap has a thickness smaller than a length of each recess (fig. 1, page 10, line 25-page 11, line 1). Regarding claim 19, 20 and 21, the pipe has a head section tapered toward a tip and the tip is positioned on axis of the pipe, the head section is a trigonal pyramid in shape (fig. 1, page 8, lines 4-12).

Regarding claim 23, Bell discloses an elongated pipe 12 having a liquid flow path extending therein and a head section tapered toward a tip thereof, wherein the tip is positioned on axis of the pipe (fig. 1, abstract). Regarding claim 24 and 24, the head is trigonal pyramid in shape (fig. 1, page 8, lines 4-12). Regarding claim 26, the pipe includes a first elongated recess 26 provided in the outer surface 14 thereof, the first recess being arranged in a straight line parallel to an axis thereof and extending from one ridgeline of the head section. The Examiner maintains that the vent 26 extends from head portion ridgeline 18, the point at which the slope of the tip ends (fig. 1, page 8, lines 4-12). Regarding claim 28, sample aperture 22 extends from the outer surface 14 into the lumen 17 proximate the first end 18 (page 8, lines 25-34). Regarding claim 29, Bell discloses a sample analyzer (27) that comprises the sample aspirator disclosed above (page 7, line 12- page 8, line 2).

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***Allowable Subject Matter***

Claims 16, 17, 22 and 27 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. The prior art does not teach or fairly suggest providing a plurality of recess arranged in line, a straight axis with multiples recess as provided in figure, 34 of the instant application.

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Samuel P. Siefke whose telephone number is 571-272-1262. The examiner can normally be reached on M-F 7:00am-5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jill A. Warden can be reached on 571-272-1700. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Sam P. Siefke

A handwritten signature in black ink, appearing to be 'S P Siefke', written over the printed name.

July 17, 2007